

Decision 04-01-019 January 8, 2004

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Into
Implementation of Senate Bill 669 and
Assembly Bill 1734, as They Affect the
Deaf and Disabled Telecommunications
Equipment and Services Program Fund.

Rulemaking 03-03-014
(Filed March 13, 2003)

O P I N I O N

This decision grants the California Coalition of Agencies Serving the Deaf and Hard of Hearing, Inc. (Coalition) an award of \$27,409.26 in compensation for its substantial contributions to Decision (D.) 03-06-070. In that decision, the Commission adopted new charters for the Telecommunications Access for the Deaf and Disabled Administrative Committee (TADDAC) and two other advisory committees dealing with the Deaf and Disabled Telecommunications Program (DDTP).

1. Background

The DDTP is a quasi-governmental entity subject to the oversight of the Commission. It is responsible for providing telecommunications services to the deaf and disabled communities of California. This rulemaking proceeding dealt with implementation of Senate Bill (SB) 669 and Assembly Bill (AB) 1734. SB 669 codifies six advisory boards to advise the Commission on administration of eight telecommunications programs, including the DDTP. AB 1734 was urgency legislation enacted on June 20, 2002, requiring fund transfers for the DDTP to commence on July 1, 2003. Resolution T-16703, approved by the Commission on

December 17, 2002, adopted a transition plan for the DDTP in order to comply with SB 669 and AB 1734.

The Coalition timely filed its notice of intent (NOI) to claim compensation on April 24, 2003. In response, the assigned Administrative Law Judge (ALJ) ruled on May 29, 2003, that the Coalition is a Category 3 customer as described in Pub. Util. Code § 1802(b) and is an organization authorized by its bylaws to represent the interests of residential customers. The ALJ decided that the Coalition had fulfilled the requirements of § 1804(a)(2)(A)(ii) by having submitted an itemized estimate of compensation expected to be requested, and that it had demonstrated significant hardship pursuant to § 1803.

The current proceeding was the latest Commission activity in response to the administrative transition of the DDTP, as well as the Commission's other public programs, mandated initially by SB 669. AB 1734 postponed the transition of the DDTP from July 1, 2002, to July 1, 2003, and set forth various legislative directives regarding future DDTP administration. The postponement was necessary because of the complexity of the DDTP administrative structure and operations.

D.03-06-070 dealt with Telecommunications Division recommendations in Resolution T-16703, recommendations by the DDTPAC pursuant to AB 1734, and comments from a public workshop held on October 9, 2002.

Consistent with the requirement of Pub. Util. Code § 1804(c), the Coalition filed this request for compensation within 60 days of the date of issuance of D.03-06-070. No party has opposed the Coalition's request for compensation.

2. Requirements for Awards of Compensation

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Pub. Util. Code

§§ 1801-1812. Pub. Util. Code § 1804(a) requires an intervenor to file an NOI to claim compensation within 30 days of the prehearing conference or by a date established by the Commission. The Coalition filed a timely NOI in this proceeding.

Section 1804(c) requires an intervenor requesting compensation to provide “a detailed description of services and expenditures and a description of the customer’s substantial contribution to the hearing or proceeding.”

Section 1802(h) states that “substantial contribution” means that,

in the judgment of the commission, the customer’s presentation has substantially assisted the Commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer’s participation has resulted in a substantial contribution, even if the decision adopts that customer’s contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate’s fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation.

Section 1804(e) requires the Commission to issue a decision that determines whether or not the customer has made a substantial contribution and the amount of compensation to be paid. The level of compensation must take into account the market rate paid to individuals with comparable training and experience who offer similar services, consistent with § 1806.

3. Contributions to Resolution of Issues

The Coalition’s participation in this proceeding met the Commission’s criteria for determining whether an intervenor has made a substantial contribution of a Commission decision. The Coalition has been involved in all of

the Commission's public activities, including the proceedings resulting in prior decisions that responded to SB 669 and AB 1734 (i.e., D.02-04-059, D.01-09-064, and D.01-07-023 as modified by D.02-01-018). The Coalition participated in workshops and submitted written comments on draft resolutions and in rulemaking proceedings. The Coalition also has corresponded with Commission staff and met with staff on a number of occasions.

This is the first time that the Coalition has sought compensation for the time and effort its representatives have spent contributing to the Commission's implementation of the two legislative bills. Listed below are some of the issues upon which Coalition attorney time was spent, along with the contributions made by the Coalition.

3.1 Moving Placement Program

In two sets of comments in connection with the adoption of Resolution T-16703 and in its opening comments in this proceeding, the Coalition urged transferring oversight of the TTY Placement Program from the Payphone Service Providers Committee to the DDTP. The Coalition argued that AB 1734 amended the Public Utilities Code sufficiently to allow such a transfer. Although the Commission did not order such a transfer, believing the transfer to contravene the current statutory language, it agreed with the Coalition that there were compelling reasons for a transfer and stated that it would explore the possibility of introducing legislation to change the Code.

3.2 Issue Expansion and Budget Responsibility

The Coalition urged the Commission to take advantage of the specialized knowledge of the TADDAC and its advisory committees by making clear in the TADDAC charter that the Commission may direct that committee to consider issues that go beyond the DDTP. The Coalition also took issue with a proposed

elimination of charter language stating that TADDAC is to be concerned with matters that impact the DDTP budget. The Coalition argued that it must consider such issues in making recommendations regarding the annual budget and surcharge rate changes. In its decision, the Commission adopted these changes in whole or in part.

3.3 Contracting Process Involvement

The draft charters in the Order Instituting Rulemaking contained no mention of DDTP committee involvement in the contracting process. The Coalition urged that the charters include a directive to ensure the committees were involved in all phases of the process, stating that the Commission in the past has benefited from such involvement. The ALJ's draft decision agreed that committee members can assist Commission staff, and it included a new charter provision directing TADDAC to assign up to two committee members of its own or from its advisory committees to accomplish this. In its comments, the Coalition took issue with this two-member cap, arguing its need for flexibility. In its final decision, the Commission allowed for a maximum of two members from each of the three DDTP committees to be assigned, instead of only two members from all of the committees.

3.4 Outside Counsel, Non-Voting Liaisons

The Coalition argued that TADDAC should be able to seek and obtain approval to retain outside counsel in appropriate circumstances. Although the Commission did not adopt the Coalition's position, the comments contributed to a more thorough consideration of this issue on the record.

The Coalition pointed out that the draft committee charters had omitted the Primary Service Provider as a non-voting liaison and noted that the Commission had already directed in its resolution that this entity was to be a

liaison to the three committees. The adopted charters include the Primary Service Provider as a liaison. The Coalition argued for fewer non-voting liaisons. The ALJ draft decision took a different tack, allowing for the flexibility of having contractor liaisons attend committee meetings on invitation. The Coalition supported this process as reasonable, but suggested clarification language which was adopted in the final decision.

3.5 Member Terms, New Member Appointments

The Coalition responded to the question regarding the staggered terms of committee members by taking the position that terms of the representatives of the disabled community were not sufficiently staggered on the TADDAC and those of the deaf community were likewise insufficiently staggered on the California Relay Service Advisory Committee. The Commission agreed and adopted the Coalition's recommended solutions.

The Coalition also urged that language be added to the TADDAC charter providing for recommendations to the Executive Director regarding the appointment of new committee members. The final decision has TADDAC appointing all members of the three committees instead of merely recommending them to the Executive Director.

3.6 Voting, Contractor Reports

The Coalition urged a less stringent committee voting requirement than that set forth in a draft charter to account for committee members who may need to recuse themselves or who may want to abstain from voting on a matter. The Commission agreed, and the adopted charter contains the more liberal rule.

The draft TADDAC charter included no provisions to ensure that contractor reports were to be shared with TADDAC. The Coalition argued, as

did DDTPAC, that the charter should make it clear that this was to occur. The Commission adopted charter provisions to ensure report sharing.

3.7 Other Issues

The final decision adopts Coalition recommendations on committee meeting minutes and distribution. Additionally, the final decision addresses the Coalition's recommendation to keep an odd number of members on the TADDAC by granting authority to TADDAC to expand membership by one or two additional members.

4. The Coalition's Contributions Are Substantial

It is clear that the Coalition's efforts comprised a comprehensive package that directly influenced both the conduct and the substantive outcomes of this proceeding. The final decision reflects the work of the Coalition in representing consumer interests. We conclude that the Coalition contributed to the Commission's decision-making process by persuading the Commission to adopt many of the Coalition's positions, in whole or part, and by ensuring a full discussion of different substantive positions. The record demonstrates that the Coalition contributed substantially to the development of a quality record.

We find further that no reduction of compensation for duplication is warranted on this record. While some overlap occurred, the Coalition took steps to keep duplication to a minimum and to ensure that when it did happen, the work served to complement or supplement the showings of the other party.

5. Reasonableness of Requested Compensation

The Coalition requests compensation for all of the time and expenses reasonably devoted to its participation in this proceeding, for a total request of \$27,409.26 for work leading up to D.03-06-070.

Advocate's Fees

J. Kresse	44.10 Hours	X	\$335 (2003)	=	\$14,773.50
J. Kresse	15.10 Hours (Comp. Req.)	X	\$167.50	=	\$ 2,529.25
J. Kresse	25.80 Hours	X	\$330 (2002)	=	\$ 8,514
Paralegal	5.00 Hours	X	\$100 (2003)	=	\$ 500
Paralegal	7.50 Hours	X	\$ 95 (2002)	=	\$ 712.50
SUBTOTAL				=	\$27,029.25

Other Costs

Copies	=	\$157.40	
Postage	=	\$ 76.36	
Travel	=	\$146.25	
SUBTOTAL		=	\$ 380.01

TOTAL REQUESTED = \$27,409.26

5.1 Hours Claimed

The Coalition has presented its advocate hourly records in an appendix that is part of the request for compensation. The information reflects the hours devoted to reviewing the records, drafting briefs and responses, and participating in workshops and other proceedings. Consistent with Commission policy, the Coalition billed half of its attorney rate for time related to preparation of this compensation request and half of its paralegal rate for travel time. The hours the Coalition claims are reasonable.

5.2 Hourly Rates

Section 1806 requires the Commission to compensate eligible parties at a rate that reflects the "market rate paid to persons of comparable training and experience who offer similar services."

The hourly rate most recently approved by the Commission for J. Kendrick Kresse was \$280 for work performed in the years 2000 and 2001. (D.02-04-015.) Kresse has been representing deaf organizations before the Commission for more

than 20 years in dozens of proceedings. He has practiced law for 29 years. A review of the California Public Utilities Commission Intervenor Compensation Decisions Annotated Bibliography 2001 (Bibliography) shows hourly rates being awarded in the range of \$300 to \$315 for work performed in 2000-2001 by senior attorneys. Other recent compensation decisions show awards as high as \$340 for work performed in 2002 (D.03-07-014) and \$350 for work performed in 2001 (D.03-05-062). The Coalition's request is that Kresse be granted a rate of \$330 for work performed in 2002 and \$335 for work performed in 2003 on grounds that these rates are comparable to those of attorneys with similar experience performing similar services. We note also that the work in this proceeding required specialized knowledge and experience not widely available in the legal community.

The paralegal rates of \$95 in 2002 and \$100 in 2003 are comparable to rates awarded paralegals and support staff in other cases as recorded in the Bibliography. The paralegal who performed work on behalf of the Coalition is Anthony Papalia, who has more than 12 years of experience, including frequent involvement in Commission proceedings.

We find that the rates requested by the Coalition for its attorney and paralegal work are reasonable and reflect market rates for individuals of similar experience and qualifications.

5.3 Other Costs

The Coalition claims \$380.01 in administrative and other miscellaneous expenses associated with its work performed in connection with D.03-06-070. We have examined the documentation supporting these requests. We find them reasonable.

6. Award

We award the Coalition \$27,409.26 for its substantial contributions to D.03-06-070. Consistent with previous Commission decisions, we will order that interest be paid on the award amount (calculated at the three-month commercial paper rate), commencing the 75th day after the Coalition filed this compensation request (the 75th day was November 5, 2003) and continuing until full payment of the award has been made.

This rulemaking proceeding affected a broad array of utilities and others in the telemarketing field. As such, we find it appropriate to authorize payment of the compensation award from the intervenor compensation program fund, as described in D.00-01-020.

7. Waiver of Comment Period

This is a compensation matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(3), the otherwise applicable 30-day review and comment period is being waived.

8. Assignment of Proceeding

Susan P. Kennedy is the Assigned Commissioner and Karen Jones is the assigned ALJ in this proceeding.

Findings of Fact

1. The Coalition timely requested compensation for contributions to D.03-06-070, as set forth herein.
2. The Coalition requests hourly rates for its advocates that are found to be reasonable based on a comparison to market rates for individuals of similar experience and qualifications.
3. The miscellaneous costs incurred by the Coalition in this proceeding are reasonable.

Conclusions of Law

1. The Coalition has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation.
2. The Coalition should be awarded \$27,409.26 in compensation for substantial contributions to D.03-06-070.
3. This order should be effective today so that the Coalition may be compensated without unnecessary delay.

O R D E R

IT IS ORDERED that:

1. The California Coalition of Agencies Serving the Deaf and Hard of Hearing, Inc. (Coalition) is awarded \$27,409.26 as set forth herein for substantial contributions to Decision (D.) 03-06-070.
2. The award should be paid from the intervenor compensation program fund, as described in D.00-01-020. Interest shall be paid at the rate earned on prime, three-month commercial paper as reported in the Federal Reserve Statistical Release, H.15, with interest beginning on November 5, 2003, and continuing until the full payment has been made.
3. This proceeding is closed.

This order is effective today.

Dated January 8, 2004, at San Francisco, California.

MICHAEL R. PEEVEY
President
CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY

Commissioners

Compensation Decision Summary Information

Compensation Decision:	D0401019
Contribution Decision(s):	D0306070
Proceeding(s):	R0303014
Author:	ALJ Jones
Payer(s):	Commission

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Reason Disallowance
California Coalition of Agencies Serving the Deaf and Hard of Hearing, Inc.	08/22/2003	\$27,409.26	\$27,409.26	—

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
J. Kendrick	Kresse	Attorney	California Coalition of Agencies Serving the Deaf and Hard of Hearing, Inc.	\$330	2002	\$330
J. Kendrick	Kresse	Attorney	California Coalition of Agencies Serving the Deaf and Hard of Hearing, Inc.	\$335	2003	\$335
Anthony	Papalia	Paralegal	California Coalition of Agencies Serving the Deaf and Hard of Hearing, Inc.	\$ 95	2002	\$ 95
Anthony	Papalia	Paralegal	California Coalition of Agencies Serving the Deaf and Hard of Hearing, Inc.	\$100	2003	\$100